

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 924 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHANDULAL BHAGWANDAS GANDHI

Versus

PARSHOTTAMDAS CHIMANLAL

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Appearance:

MR RR MARSHALL for Petitioners

MRS KETTY A MEHTA for Respondent No. 1

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/11/98

#### ORAL JUDGEMENT

This litigation is in between the tenant and the landlord. The petitioners in this civil revision application are tenants in the disputed premises of which the respondent is the owner. The respondent plaintiff owner filed a suit for eviction of the tenant - defendant petitioners from the suit premises. This suit was decreed and the learned Trial Court ordered for the eviction of the tenant defendant petitioners from the suit premises.

2. Aggrieved of the judgement of the learned Trial Court, the tenant defendant petitioners filed an appeal before the First Appellate Court. During the pendency of the appeal by filing application the plaintiff respondent prayed for bringing on record subsequent events which had taken place. The subsequent events which were also sought to be brought on record by the plaintiff respondent are as follows:-

1. After the decree of the suit by the learned Trial Court the daughter of the plaintiff respondent has been conferred with the degree of MD and she needed the premises for starting her own nursing home.

2. The plaintiff respondent has lost some property in the TP scheme and

3. The tenant defendant petitioners have acquired suitable accommodation in a TP Scheme.

3. The Learned First Appellate Court has granted the permission to the plaintiff respondent to bring on record of the first appeal these subsequent events which had taken place. It is not in dispute that the First Appellate Court while granting the permission to the plaintiff respondent to bring on record the subsequent events ordered that the defendant petitioner may have an opportunity to produce the evidence. The defendant petitioner filed an application before the First Appellate Court for permission to amend the written statements. Under the impugned order that permission has been declined. Hence this revision application is before this Court.

4. The learned Counsel for the defendant petitioners raised manyfold contentions challenged the impugned order of the learned Trial Court. Similarly the Learned Counsel for the plaintiff respondent also vehemently made manyfold contention to satisfy this Court that the impugned order does not call for interference of this Court in revision.

5. I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties.

6. The Learned Counsel for the parties are not at variance on the principle that the parties to litigation and more precisely the eviction litigation of a tenant from the suit premises, have right to produce on record of the appellate court or a revisional court all the

subsequent events which have taken place during the pendency of the litigation. The dispute is only of form and not of substance. The learned Counsel for the defendant petitioners does not dispute that the subsequent events have not been brought on record by way of any amendment to be made by the plaintiff respondent in the plaint. It has further been admitted by the learned Counsel for the defendant petitioners that the plaintiff respondent has not prayed for nor the learned Trial Court has granted any permission to produce any oral evidence. The plaintiff respondent has only relying upon a documentary evidence for the subsequent events which have taken place. The Learned Counsel for the plaintiff respondent also does not dispute that while granting the permission to the plaintiff respondent to bring on record of first Appellate Court these subsequent events which have taken place, the liberty has been granted to the defendant - petitioners to produce their evidence is rebutted.

7. The defendant petitioners in fact are intending to be granted permission by the First Appellate Court to amend their written statement. The approach which has been made and the grounds given for rejection of the application of the defendant - petitioners may not be justified or reasonable or in consonance with the basic principles of natural justice or a procedure to be followed in such matters but only on this ground the order of the First Appellate Court cannot be quashed and set aside by this Court under Section 115 of the CPC, 1908. The purpose and object of a litigant may be in the form and they may be least concerned with the substance of the matter but the Courts are to take care of the situation and above that the substance of the matter has to be considered and where Courts considers fit, feel necessary proper and appropriate the insistence of a litigant on form should be discouraged. In the present case, I find sufficient justification in the case of the defendant petitioners that they should be given an opportunity to produce the rebuttal of the material which has been allowed to be brought on record in the first appeal in the category of subsequent events which had taken place pending litigation by the plaintiff respondent. But whether it should be permitted to be allowed by the amendment of the written statement or in the form of production of the documentary evidence or of any oral evidence in the form of reply to the application filed by the plaintiff respondent or in the form of affidavit of themselves or some other persons who can throw some light on the matter. The Learned Counsel for the petitioner also fairly conceded before this court

that he is also not in favour of form but he is only concerned with the substance of the matter.

8. In the result this Civil Application is allowed and the impugned order of the learned First Appellate Court is quashed and set aside.

9. The petitioner are entitled to file documentary evidence in support of their case in rebuttal of the documentary evidence produced by the plaintiff respondent and further oral evidence in the form of the reply to the application of the respondent bringing on record of the subsequent events and/or affidavit of either of themselves or any of them or all or any other person concerned with the facts relating to the subsequent events that took place. This order does not give rise to any right to either of the parties to produce oral evidence and to call any of the deponent of the affidavits filed in the Court for cross-examination. The interim relief granted by this Court stands vacated. The parties to have bear their own costs of this litigation. Rule and Civil Revision Application stand disposed of accordingly.

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